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Paper No. /

In re Application of : DECISION ON PETITION
Alan H. Shikani :
Serial No. : 09/801,486 :
Filed : March 8, 2001 :
For : Tracheostomy Tube With Adjustable Quick Release :
And Method Therefor :

This is a decision on petitioner's request filed May 28, 2003 by which petitioners request the establishment of a new shortened statutory period for filing a reply to the Office letter dated February 3, 2003, which was a Final Rejection. Petitioner alleges that he did not receive the Office letter in question. The petition is being considered under 37 CFR 1.181, and no fee is required.

Section 711.03(c) of the MPEP sets forth guidelines for establishing non-receipt of Office correspondence. Although the evidentiary showing set forth therein is discussed in the context of withdrawing a holding of abandonment, that evidentiary showing is acceptable under the circumstance in the instant application in which applicant is informed of the mailing of an Office action which has not been received by applicant, even though the application has not yet been held to have become abandoned. In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed May 28, 2003 includes all the above elements. The request is therefore GRANTED. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner for the remailing of the Final Rejection of February 3, 2003; the remailing of this Office action will establish a new shortened statutory period for response.

Summary: Final Rejection of February 3, 2003 to be remailed setting forth a new shortened statutory period for response.

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ak/07/10/03